

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
HAWAIIAN ELECTRIC COMPANY, INC.,)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
and MAUI ELECTRIC COMPANY, LTD.'s)
)
Providing Confidential Customer)
and Program Information to SCIENCE)
APPLICATIONS INTERNATIONAL)
CORPORATION)
_____)

PROTECTIVE ORDER 2009-PO-18

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

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FILED

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HAWAII ELECTRIC LIGHT COMPANY, INC.)
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Providing Confidential Customer)
and Program Information to SCIENCE)
APPLICATIONS INTERNATIONAL)
CORPORATION)

By this Protective Order, the commission: (1) directs HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"),¹ HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"),² and MAUI ELECTRIC COMPANY, LTD. ("MECO")³ (collectively, the "HECO Companies") to provide

²HELCO is a Hawaii corporation and a public utility as defined by HRS § 269-1. HELCO was initially organized under the laws of the Republic of Hawaii on or about December 5, 1894. HELCO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Hawaii in the State of Hawaii.

³MECO is a Hawaii corporation and a public utility as defined by HRS § 269-1. MECO was initially organized under the laws of the Territory of Hawaii on or about April 28, 1921. MECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Maui; the production, transmission, distribution, and sale of electricity on the island of Molokai, and the production, distribution, and sale of electricity on the island of Lanai in the State of Hawaii.

certain confidential information to Science Applications International Corporation ("SAIC"), the third party administrator ("Program Administrator") for the Hawaii Energy Efficiency Program; and (2) sets the terms to govern the treatment of that confidential information.

I.

Order Directing the HECO Companies
to Provide Certain Confidential Information

By Decision and Order No. 23258, filed on February 13, 2007, in Docket No. 05-0069 ("Decision and Order No. 23258"), the commission determined that the HECO Companies' energy efficiency programs shall transition from the HECO Companies to a third-party administrator by January 2009, unless otherwise ordered by the commission.⁴

After issuing a Request for Proposals on September 18, 2008, the commission selected SAIC as the Program Administrator to provide energy efficiency programs in the HECO Companies' service territories. The commission entered into a contract with SAIC on March 3, 2009 ("SAIC Contract"). Among other things, the SAIC Contract includes provisions governing the treatment of confidential information. These provisions direct SAIC regarding processes to maintain the confidentiality of certain information. SAIC, its employees and

⁴See Decision and Order No. 23258, at 35.

subcontractors are also prohibited from using any confidential information for purposes other than as permitted or required by the SAIC Contract.

On February 12, 2009, SAIC sent a letter to the commission requesting that certain utility customer and program information be provided in order for it to conduct a smooth and timely program transition.⁵ On February 23, 2009, the commission sent a letter, referencing and enclosing SAIC's letter, to the HECO Companies directing them to provide the requested information citing the need for sharing of customer and program information as integral to the effective provisioning of energy efficiency programs by the program administrator.

On March 5, 2009, the HECO Companies provided much of the requested information to the commission; however, deeming a few items to be confidential, they declined to produce them absent commission order. Specifically, the letter states, "the [HECO] Companies respectfully request that the [c]ommission issue an order directing the [HECO] Companies to turn over such information directly to the [c]ommission."⁶ The information includes the following:

- Customer-specific information for past and present efficiency program participants (i.e. account number, service location, name, address, phone, rate class, etc.).

⁵Letter dated February 12, 2009, from SAIC to the commission, at 1.

⁶Letter filed March 5, 2009 from the HECO Companies to the commission, attached hereto as Exhibit B, at 1.

Note that SAIC is not requesting customer payment histories or amounts billed for service.

- Usage or customer production data with account number, location, [kilowatt hours ("kWh")], meter readings, time of use, etc. (customer's historic electric demand characteristics) for commercial and industrial accounts;
- Measure data with account number, location, program code, end use, date of installation, kWh saved, incentive payments, etc, as well as technical descriptive information for the measures such as number and type of equipment installed, description of pre-measure equipment and condition, etc. (efficiency measures already provided to the customer by the HECO Companies);
- System map showing location of all generation (including [Independent Power Producers], renewable and customer owned), transformation, transmission and distribution facilities.⁷

Here, the commission finds that the release of the requested customer and program information to SAIC will serve a public purpose, as it will enable SAIC to obtain the maximum energy efficiency savings in the most cost-effective manner possible, thereby indirectly benefiting all utility customers. Therefore, we find that given the confidentiality requirements we have imposed on SAIC via the SAIC Contract, the public benefits that will result from the release of confidential information to SAIC outweigh the potential benefits to individual customers of confidentiality.

⁷Letter dated February 12, 2009, from SAIC to the commission, at 1-2.

Based on the above, the commission determines that the confidential information requested is needed by SAIC to perform as the Program Administrator and SAIC is acting under very clearly defined confidentiality guidelines to deliver an essential service, therefore, the HECO Companies must provide the confidential information (in a user-friendly format) that is currently in their possession within twenty days of the filing of this Order, and provide any updates or additional information, as requested by letter from the commission's Chairperson. The HECO Companies shall transmit the confidential information directly to SAIC.

II.

Protective Order

The commission issues the following Protective Order to govern the treatment of the confidential information referenced above:

WHEREAS, certain information requested by SAIC is represented by the HECO Companies to be confidential pursuant to the HECO Companies' Privacy Policy, as well as state and federal privacy laws, and such information may include information considered confidential by a third party or otherwise subject to a confidentiality clause;

WHEREAS, certain information pertinent to the transition of the energy efficiency programs may include "critical infrastructure information" subject to protection from

the Homeland Security Act of 2002 and the rules and guidelines promulgated thereafter;

WHEREAS, the disclosure of certain confidential information could work to the HECO Companies' competitive disadvantage if other parties were to have access to that information;

WHEREAS, the commission anticipates that during the course of this proceeding, information considered to be privileged or confidential by the HECO Companies may be requested or filed;

WHEREAS, the commission desires to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential and any information which the HECO Companies may in the future contend to be confidential;

NOW, THEREFORE, in accordance with Hawaii Administrative Rules § 6-61-50, the commission hereby issues a protective order covering the confidential information in this proceeding, as follows:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of trade secrets and other confidential information produced by the HECO Companies pursuant to the commission's February 23, 2009 request, and any further updates or additional information, as requested by letter from the commission's Chairperson.

CLASSIFICATION

2. The HECO Companies may designate as confidential any information they believe, in good faith, is confidential pursuant to the HECO Companies' Privacy Policy, as well as state and federal privacy laws, and/or is considered confidential by a third party or otherwise subject to a confidentiality clause; or contains trade secrets or other confidential research, development, commercial, financial, vendor, or bid information, including but not limited to cost support studies, or nonpublic information, "critical infrastructure information" that should not be disclosed publicly under the Homeland Security Act of 2002, and/or information that is related to the security of the HECO Companies' facilities, that if disclosed publicly, could increase risk to the HECO Companies' facilities, jeopardize their emergency and disaster preparedness plans, and/or adversely impact their ability to respond to potential terrorist threats. Such information shall be protected against disclosure pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the party claiming confidentiality, as provided below.

3. If the HECO Companies designate information as confidential pursuant to paragraph 2 above or 4 below, they shall produce the confidential information in accordance with the procedures described below. For information designated as confidential, the HECO Companies must be able to: (1) identify, in reasonable detail, the information's source, character, and

location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. If anyone challenges the claim of confidentiality of the information, the HECO Companies shall bear the burden of proof in supporting their claim of confidentiality.

4. Confidential information provided to SAIC, its staff, counsel, or consultants orally or in any other form, shall be protected as fully as confidential information provided in written form. The HECO Companies shall notify SAIC when information provided orally or in other than written form includes confidential information. At the time of such notification, the HECO Companies shall be able to, in the manner provided in paragraph 3 above, specify the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the HECO Companies from any misuse or unpermitted disclosure of the information.

FORMS OF CONFIDENTIAL INFORMATION

5. All information claimed to be confidential information shall be subject to the terms of this protective order, and shall be treated as constituting confidential information. Unless a different treatment is warranted, any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that reflects the underlying confidential information, shall also be subject to the terms of this protective order.

DESIGNATION

6. For information that the HECO Companies claim is confidential they shall place upon all applicable material the following legend:

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the HECO Companies shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

7. With respect to any confidential information that is not under the control of the HECO Companies, other persons shall, to the extent requested by the HECO Companies, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 6 above.

8. The HECO Companies may request that any document or other information previously produced but not designated as confidential, be treated as confidential by SAIC, provided that the HECO Companies, in the manner provided in paragraph 3 above, are able to specify the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the HECO Companies from any misuse or unpermitted disclosure of the information.

DISCLOSURE

9. If SAIC, its staff, counsel, or consultants disclose confidential information to any other person or entity, they must request permission from the HECO Companies. The request shall identify the person to whom disclosure is desired; disclose any past, present, or anticipated affiliation or relationship; specify the exact information to be disclosed; and state the reasons for disclosure. If permission is granted by the HECO Companies, disclosure of the confidential information may be made.

USE OF CONFIDENTIAL INFORMATION

10. Any confidential information obtained under this protective order may be used by SAIC solely for the purposes delineated in the SAIC Contract, and shall not be used for any other purpose except as may be directed by (a) an order of court, or (b) an order of the commission.

11. Any confidential information obtained under this protective order may only be used by SAIC, its staff, counsel, or consultants to perform its duties as Program Administrator. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the HECO Companies, or until further order of the commission.

RETENTION OF CONFIDENTIAL INFORMATION

12. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential

information, or otherwise secured to ensure that access to and disclosure of the confidential information is limited.

13. Confidential information that is given to SAIC, its staff, counsel, or consultants, shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

**THIS ENVELOPE IS SEALED PURSUANT TO
PROTECTIVE ORDER FILED ON _____,
AND CONTAINS DOCUMENTS WITH CONFIDENTIAL
INFORMATION. IT IS NOT TO BE OPENED OR THE
CONTENTS OF THIS ENVELOPE DISPLAYED OR
REVEALED EXCEPT TO QUALIFIED PERSONS
AUTHORIZED TO INSPECT THE ENCLOSED
DOCUMENTS.**

14. Confidential information shall not be reproduced or duplicated, except to make working copies. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the following legend: "Copying Prohibited."

15. If a court or other administrative agency requests, subpoenas, or orders production of confidential information that a party or person has obtained under this protective order, that party or person, prior to disclosure, shall promptly notify the HECO Companies of the request, subpoena, or order.

DURATION OF CONFIDENTIALITY

16. The confidentiality of the information produced pursuant to this protective order shall be preserved until the HECO Companies terminate the protection conferred by this protective order, or until further order of the commission.

APPEAL TO THE COMMISSION

17. If SAIC disagrees with the designation of information as confidential, the HECO Companies and SAIC shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, SAIC shall file an appropriate motion with the commission. The HECO Companies shall bear the burden of proof in supporting its claim, and the commission will determine whether the information shall continue to be designated as confidential under this protective order. Pending a disposition of the motion, the information in question shall be treated as confidential information.

NONWAIVER OF OBJECTIONS AND RIGHTS

18. The HECO Companies retain the right to contest any assertion or finding of confidentiality or of non-confidentiality.

MODIFICATION OF THE PROTECTIVE ORDER

19. The commission may modify this protective order on the motion of any the HECO Companies or SAIC, or on its own motion, upon reasonable notice to the HECO Companies and SAIC and an opportunity for hearing, or the commission may modify this Stipulation for Protective Order upon receipt and approval of written stipulation by the HECO Companies and SAIC.

DISPOSAL OF CONFIDENTIAL INFORMATION

20. Except as provided below, SAIC shall, at the option of the HECO Companies, return or destroy all such materials and all copies, notes, tapes, papers, or other medium

containing, summarizing, excerpting, or otherwise embodying any confidential information. If the HECO Companies request destruction, the person destroying the information shall certify its destruction to the HECO Companies, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.

21. SAIC, its staff, counsel, and consultants shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files on this proceeding. The files shall not be disclosed to any other person.

SANCTIONS

Any person violating this protective order shall be subject to sanctions imposed by the commission.

containing, summarizing, excerpting, or otherwise embodying any confidential information. If the HECO Companies request destruction, the person destroying the information shall certify its destruction to the HECO Companies, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.

21. SAIC, its staff, counsel, and consultants shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files on this proceeding. The files shall not be disclosed to any other person.

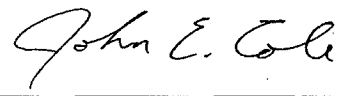
SANCTIONS

Any person violating this protective order shall be subject to sanctions imposed by the commission.

DONE at Honolulu, Hawaii APR 16 2009.

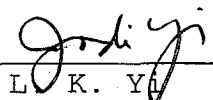
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

APPROVED AS TO FORM:

By: 
Leslie H. Kondo, Commissioner


Jodi L. K. Yee
Commission Counsel
Protective Order.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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